

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The subject notice of violation and \$400 penalty issued by the Southwest Air Pollution Control Authority is vacated.

DATED this 12<sup>th</sup> day of July, 1984.

POLLUTION CONTROL HEARINGS BOARD

 7/10/84  
LAWRENCE J. FAULK, Vice Chairman

  
GAYLE ROTHROCK, Chairman

### III

Pursuant to this and other legislative authority, the respondent has adopted its Regulation I, Section 400-075(1) which provides:

The emission standards for asbestos, beryllium, beryllium rocket motor firing, mercury and vinyl chloride promulgated by the United States Environmental Protection Agency prior to April 26, 1979, as contained in 40 CFR Part 61, are by this reference adopted and incorporated herein.

### IV

Respondent agency has the burden of proof in air pollution penalty matters which come to the Board on appeal.

### V

The Board believes it is unclear from the evidence presented whether intergovernmental notification in the autumn of 1983 should have resulted in actual notice of proposed asbestos removal. If the mutual cooperation for notice was working well, as it should under current agreements, respondent should have been notified of appellant's proposed actions. Appellant did notify EPA in accordance with the regulations.

The Board concludes that respondent did not carry the burden of proof on the purported violation of its regulations.

### VI

In any event, the testimony presented by both respondent and appellant revealed that the asbestos removal work was designed and executed in a manner which meets relevant standards and good construction business practices.

1 no SWAPCA permits had been issued for the asbestos removal operation

2 VII

3 Consequently, on May 17, 1984, respondent agency's executive  
4 director issued a notice of violation and \$400 civil penalty for  
5 violation of Section 400-075 of Regulation I. On May 24, 1984, this  
6 Board received appellant's appeal of that penalty.

7 VIII

8 Any Conclusion of Law which should be deemed a Finding of Fact is  
9 hereby adopted as such.

10 From these Findings the Board comes to these

11 CONCLUSIONS OF LAW

12 I

13 The Legislature of the State of Washington has enacted the  
14 following policy regarding cooperation with the Federal government, -  
15 which reads in relevant part:

16 It is the policy of the state to cooperate with the  
17 federal government in order to insure the  
18 coordination of the provisions of the federal and  
state clean air acts (RCW 70.94.510).

19 II

20 Title 40, Code of Federal Regulations, part 61 (M)(146) provides  
21 in relevant part:

22 Each owner or operator to which this section  
23 applies shall: (a) provide the administrator (EPA)  
24 with written notice of intention to demolish or  
renovate.... (1) at least 10 days.... (2) 20  
days....(3) or as soon as possible....

25 These notification alternatives depend on the amount of asbestos  
26 to be removed.

indicating to them the names and locations of approved asbestos disposal sites in the State of Washington. This included notation of SWAPCA's executive director as one of two contacts which could be made regarding disposal in Cowlitz County.

V

On December 20, 1983, the State Department of Labor and Industries wrote a letter to respondent SWAPCA indicating that they (Dept. of Labor and Industries) wanted to be notified of companies requesting permits to do asbestos removal and disposal. The Department also promised to notify SWAPCA of any companies happened upon which have not followed SWAPCA permit procedures. There is no other correspondence in evidence indicating such a notification occurred before or after the December 20th letter.

VI

On four (4) calendar days between January 30, 1984, and February 29, 1984, appellant removed asbestos from the Longview Post Office without prior notification, inspection and procedural approval of respondent SWAPCA. Appellant testified that full safety and security was provided for by completely enclosing the room which contained the asbestos; removing the asbestos and putting it into double burial bags inside the enclosed area, and then transporting the material to an approved disposal site.

VI

Subsequently, as a result of notification by other air pollution control agencies, respondent conducted an investigation and found that

1 proceedings were recorded electronically and officially reported by  
2 Gene Barker and Associates.

3 Witnesses were sworn and testified. Exhibits were examined. From  
4 the testimony heard and exhibits reviewed, the Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
8 a certified copy of its Regulation I containing respondent's  
9 regulations and amendments thereto, which are noticed.

10 II

11 On September 22, 1983, appellants wrote a letter to the Department  
12 of Labor and Industries pursuant to the Washington Industrial Safety  
13 and Health Act advising them of the locations where they would be  
14 removing asbestos from various U.S. Post Offices. They asked if more  
15 precise construction activity times were required. No response was  
16 received to this letter.

17 III

18 On October 12, 1983, appellants wrote a letter to the Seattle  
19 Regional Office of the Environmental Protection Agency to advise them  
20 that appellant would be removing and disposing of asbestos from a  
21 number of U.S. Post Offices throughout the state. No response was  
22 received to this letter.

23 IV

24 On October 17, 1983, appellant wrote to the Postal Service's  
25 architectural and engineering consultants, Peck and Associates,

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 84-106

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
CENTRAL PAINTING, INC.,

Appellant,

v.

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 84-106

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a notice of violation and civil penalty of \$400 for removing asbestos from a structure without prior notification and approval, came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk, Vice Chairman and presiding, and Gayle Rothrock, Chairman, on June 21, 1984, at Lacey, Washington.

Appellant Richard Basquette of Central Painting, Inc., appeared and represented his company. Respondent Southwest Air Pollution Control Authority (SWAPCA) was represented by Edward Taylor. The